IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 194

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, ETC.,
Petitioner,
vs.
GEORGE HUFFMAN, Individually, and on Behalf of a Class, Etc., et al.,
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF ON BEHALF OF THE PETITIONER

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Respondents' brief does not seriously oppose our basic position that a challenge to the validity of a collective agreement respecting seniority rights which rests for Federal jurisdiction on the fact that the exclusive authority of the bargaining representative derives from Federal law, is to be tested by substantially the same standards as the Court applies to legislation assailed as denying the equal protection of the laws. Without expressly conceding that this is so, and admitting only that the analogy is "a

useful one" (R. 9)*, the total thrust of respondents' brief, nevertheless, appears to be that the seniority provisions in question must fall by such a test for lack of "relevance" to authorized purposes of the collective bargaining agreement.

We submit that most of respondents' argument was anticipated and fully met in our main brief. The essential untenability of their position is, however, acutely exposed in certain aspects of their argument to which we here briefly reply.

I.

Respondents deny that collective agreements designed to preserve or strengthen the union as a bargaining representative are within the authority of a collective representative.

Respondents take direct issue with the relevance of showing, in defense of the seniority provisions in question, that they avoided a repetition of the post-World War I conflict between veterans and organized labor and, therefore, served the interest of the union as a whole. Respondents argue that such a defense "betrays" (R. 8) that "petitioner used its bargaining authority, not for the purposes intended by the National Labor Relations Act, but to implement and advance the public relations policies and the political, economic and social theories and philosophy of the International Union" (R. 8).

Petitioner's defense of the seniority agreement does not, of course, rest exclusively on the argument thus assailed by respondents. Other reasons are suggested as having induced the parties to the agreement—that it prevented rather than caused discrimination against veterans without

*All page references herein are to briefs for the petitioner (P. ..) and respondents (R. ...).

employment experience before military service (P. 21, 27-28), and that it accommodated conflicting interests within the total group represented (P. 21-32). But respondents' attack on this particular aspect of petitioner's argument clearly discloses that their total position largely depends on the proposition that it is not within the lawful authority of a collective bargaining representative to negotiate and contract for arrangements designed to enhance the security and bargaining power of the union. Respondents are driven by their own argument to the proposition that a collective bargaining representative may lawfully concern itself only with the *terms and conditions of employment*. They quote, but their argument ignores, the obviously controlling import in this connection of the guarantee of Section 7 of the National Labor Relations Act that

> "Employees shall have the right * * * to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining *or other mutual aid or protection.*" (Italics ours.)

The decision of this Court that the preferred seniority given by contract to the non-veteran union shop chairman was not in derogation of the rights secured a veteran under the Selective Training and Service Act, even during the first year of the Veteran's reemployment, because it inured to the collective bargaining strength of the whole group represented (*Aeronautical Lodge v. Campbell*, 337 U. S. 521, 69 S. Ct. 1287), though not adverting to Section 7, was clearly in recognition of the fact that the preservation and enhancement of the union's bargaining position is for the "mutual aid or protection" of the represented employees. And clearly such a contract term is not one which in the narrow sense concerns "the terms and conditions of employment".

The National Labor Relations Act and Title 3 of the Labor Management Relations Act, 1947, expressly permit contract terms looking toward the security of the union as an organization, even as an exception to the general prohibition against discrimination encouraging membership (proviso to Section 8(a)(3), permitting union shop agreements) and as an exception to the general prohibition against employer payments to the union (Title 3, Section 302 of the L. M. R. A., permitting check off of union dues). By judicial construction, the Act commands employers to bargain in good faith on union proposals for such measures of union security as the union shop and check-off of union dues. *National Labor Relations Board v. Winona Textile Mills, Inc.*, 160 F. 2d 201; *National Labor Relations Board v. Reed and Prince Mfg. Co.*, 118 F. 2d 874, cert. den. 313 U. S. 595, 61 S. Ct. 1119.

The Norris LaGuardia Act and the National Labor Relations Act represent, in their entirety, Congressional recognition of the struggle of unions for mere existence and an intervention to protect them against the more overt and socially intolerable forms of opposition. But no one would suggest that with the advent of these Acts the union had no longer any need to look to its own security. As shown above, the National Labor Relations Act itself authorizes bargaining for such additional security. The prevalence of clauses in collective agreements whereby the employer agrees to refrain from any action intended or calculated to undermine the union is further evidence of the legitimate concern of unions and their memberships for preservation of the union.

"Barring legislation not here involved, seniority rights derive their scope and significance from union contracts, confined as they almost exclusively are to unionized industry." (*Aeronautical Lodge v. Campbell, supra*, page 1290) Seniority systems were for the most part originally con-

ceded by employers with great reluctance and only in the face of economic pressure exerted by strong unions, but respondents argue in effect that a union may not lawfully contract for an intrinsically reasonable variation of a conventional seniority system, in order, in part, to protect itself against a serious potential of threat to its efficacy as a representative, if not to its very existence—although the continued existence of the entire seniority system may depend on the continued existence and efficiency of the union.

II.

Respondents' argument misconceives the standards for judicial review of collective bargaining agreements as established in the Steele case.

Respondents suggest in their brief (R. 9) that we have strained (in our brief) the analogy between the standards for judicial review of legislation and of collective bargaining agreements as delineated by this Court in the Steele case and assert:

> "A bargaining representative, performing its function does not by virtue of the legislative analogy become entitled to *fill in the gaps* left by Congress." (Italics ours.)

Respondents do not amplify this curious suggestion of limitation on the authority of a collective bargaining representative and we are not altogether certain what is intended. The most obvious implication, however, would seem to be that because Congress secured the seniority of veterans who left employment to enter the armed forces and on release therefrom elected to return to their former employment, but went no further in securing private employment for other veterans, a collective bargaining representative is forbidden as a matter of law to "fill in the gaps" and may not lawfully bargain for more advantageous provi-

ARGUMENT.

I.

The ruling of the Court of Appeals undermines the whole scheme of the National Labor Relations Act, as amended, and would make impracticable, if not impossible, the kind of collective bargaining that the Act requires. The remedy of the respondent employees lies in proceedings in their own union to bring about a change in the seniority clauses, or in proceedings under the National Labor Relations Act to change their bargaining representatives, not by collateral attack in court on a long-standing, lawful clause of the contracts.

Section 9(a) of the National Labor Relations Act, now as before Congress amended it, provides that representatives whom the majority of the employees in an appropriate bargaining unit designate

> "shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *." (U. S. C. Sec. 159.)

Section 8(a)(5) makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. Section 10 empowers the National Labor Relations Board and the courts to force employers to bargain with representatives of their employees.

In passing the Act, Congress did two new and unique things.

First, it gave to labor organizations authority that no law gives to other voluntary associations, namely, authority to bind minorities who are not members of the associations, regardless of the wishes of the minorities, and even to the detriment of individuals and minorities.

In *J. I. Case Co.* v. *Labor Board*, 321 U. S. 332 (1943), this Court discussed the nature of collective agreements under the National Labor Relations Act, saying at pages 338-9:

> "But it is urged that some employees may lose by the collective agreement, that an individual workman may sometimes have, or be capable of getting, better terms than those obtainable by the group and that his freedom of contract must be respected on that account. * * * The practice and philosophy of collective bargaining looks with suspicion on such individual advantages. * * * The workman is free, if he values his own bargaining position more than that of the group, to vote against representation; but the majority rules, and if it collectivizes the employment bargain, individual advantages or favors will generally in practice go in as a contribution to the collective result. * * *"

Besides giving representatives exclusive authority to negotiate collective agreements, even to the exclusion of individual employees and minority groups of employees themselves, Congress imposed on employers a statutory duty to bargain with the representatives. Ordinarily, the right to refuse to deal is an essential element of bargaining. Thus Congress made compulsory a process that in all other connections is essentially voluntary. Employers must recog-

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BRIEF OF CHRYSLER CORPORATION, *AMICUS CURIAE*, IN SUPPORT OF THE PETITION OF FORD MOTOR COMPANY FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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Chrysler Corporation, as an *amicus curiae*, submits this brief in support of the petition of Ford Motor Company for a writ of certiorari. Pursuant to Subdivision 9 of Rule XXVII of the Rules of this Court, Chrysler has obtained consent to its submitting this brief from all of the parties.

Opinions Below.

The opinions delivered in the Court of Appeals are reported in 195 F. 2d 170. The opinion of the District Court has not been reported (R. 26).

Interest of *Amicus Curiae.*

This *amicus curiae,* Chrysler Corporation, has for many years manufactured automobiles, trucks and automotive parts and accessories in many of the States of the United States and abroad. It employs more than 100,000 people for whom the respondent union is the exclusive bargaining representative under Section 9 of the National Labor Relations Act, as amended (29 U. S. C., Sec. 159).

In 1944 the standing of veterans whom Chrysler had not theretofore employed was a subject of intense bargaining between Chrysler and the Union. The parties seemed to agree in principle but did not agree in detail.

In 1945, as more veterans came to work for Chrysler as new employees, and as the end of the war increased the problem, Chrysler and the Union continued to explore the matter. Finally, in contract negotiations in the winter of 1945 and 1946, the parties reached agreement on a clause, which appeared in their contract dated January 26, 1946. This clause, substantially in the form to which Ford and the Union later agreed, was as follows:

> "29. Veterans of World War II who were not formerly employed by Chrysler Corporation who possess evidence of satisfactory completion of service and make application for employment within ninety (90) days of their discharge from the United States Armed Forces and meet the other qualifications for reinstatement contained in the Selective Training and Service Act of 1940, as amended, and other applicable laws and

regulations, shall, upon completion of thirty (30) days employment, receive seniority credit equivalent to their period of service in the Armed Forces in the event of a layoff during their probationary period and, upon completion of their probationary period, shall be entered upon the seniority lists of their department or division with seniority credit equivalent to their period of military service plus their probationary period."

Chrysler and the Union kept the clause in their later contracts, dated April 26, 1947, and May 28, 1948. In their contract of May 4, 1950, they froze the standing for seniority that employees had under the clause, but did not renew the clause.

Between January 26, 1946, and May 1, 1949, more than 90,000 veterans who had not previously worked for Chrysler had jobs at one time or another in Chrysler's plants. While normal turnover, which is highest among new employees, has greatly reduced this number, nevertheless, Chrysler judges that perhaps five thousand or more of these veterans still work in its plants, with the seniority they acquired under the three contracts above mentioned. They are scattered all through the seniority lists and affect the standing of tens of thousands of employees with earlier hiring dates. Doubtless, many thousands of those who left had at one time or another advantages under the clause, and other employees had disadvantages, that they would not have had if the clause in question had not existed.

Obviously, declaring the clause void will bring chaos to the seniority standing of Chrysler's em-

ployees, in place of the orderly system that now has been in effect for nearly six and one-half years.

This chaos will prevail in hundreds, if not thousands, of other plants in many industries.

If this Court does not correct the judgment of the Court of Appeals, a great multiplicity of actions for damages, in which the effect of the clause upon each of literally hundreds of thousands of employees will be an issue, will result. The respondent Union, Ford Motor Company and The Electric Auto-Lite Company already are confronted with such actions. Doubtless many more are in the making.

The only duty against "discriminating" by employers arises under the National Labor Relations Act, which forbids discriminating for union activity. It therefore is difficult for us to see how plaintiff employees could recover from employers under the clauses in question. Nevertheless, the necessity of revising extensively the seniority rolls, the resulting re-shuffling of employees who have been transferred and promoted on the basis of seniority they acquired under the clauses, the flood of grievances that would result and the unrest that would ensue, not to mention the necessity of defending what would be in effect hundreds of thousands of separate suits, would impose staggering and intolerable hardships on the employers, as well as upon the unions.

More important than all this, however, would be the effect of the decision were this Court to allow it to stand, upon the system of collective bargaining in our country. We believe, and we shall show *infra*, that the effect would be to torpedo the National Labor Relations Act and the scheme of collective bargaining that it sets up.

Reasons for Granting the Writ.

We concur, for the most part, in the arguments the petitioner herein presents. We wish to emphasize, however, the following further considerations that the Court of Appeals did not take into account and that, we believe, require reversing its judgment:

1. The ruling of the Court of Appeals undermines the whole scheme of the National Labor Relations Act, and would make impracticable, if not impossible, the collective bargaining that the Act contemplates and requires. The remedy of the respondent employees lies in proceedings in their own union to bring about a change in the seniority clauses, or in proceedings under the National Labor Relations Act to change their bargaining representatives, not by collateral attack in court on a long-standing, lawful clause of the contracts.

2. The Court of Appeals apparently, and erroneously, conceived this case to present a conflict of interest between employee veterans who worked for Ford before entering the armed forces and employee veterans who did not work for Ford before entering those forces. In truth, conflicts, to the extent that they exist, are between (1) non-veteran employees and employee veterans who worked for Ford before entering the armed forces and (2) employee veterans who did not previously work for Ford, and between members of group (2) themselves.